



Maeder

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Institute of Modern Procedures, Inc.

File: B-236964

Date: January 23, 1990

DIGEST

1. Protester's argument that its technical proposal was substantially equal to the awardee's and thus its lower price entitled it to award is rejected where record shows that awardee's proposal was reasonably regarded as technically superior to the protester's.
2. Award to higher priced, higher technically-rated offeror is proper where solicitation provides that technical considerations are more important than price and the agency reasonably determined that the technical advantages outweighed the cost savings.
3. A protester fails to prove that the proposal evaluation process was biased or that technical evaluations were unreasonable where no independent evidence of bias is provided and the record reasonably supports the contracting agency's technical judgment.
4. An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

DECISION

Institute of Modern Procedures, Inc. (IMP), protests the award of a contract to Centel, Inc., under request for proposals (RFP) No. JVVMD-89-R-0011, issued by the Department of Justice for the operation and maintenance of the computer system supporting essential functions of the main library at Justice. IMP basically contends that award to a higher priced offeror was improper because IMP's proposal was unfairly evaluated and that the agency was biased in favor of Centel.

We deny the protest.

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The RFP contemplated the award of a firm, fixed-price contract for a base year and four 1-year options. It provided that award would be based on cost if proposals were found to be substantially equal by the review panel; if proposals were rated as significantly different in technical merit, the contracting officer would determine if the difference in technical merit warranted the higher price. While the weight given technical merit and price would be approximately equal, an award to other than the low offeror could be made if specific technical advantages were identified and a determination made that these advantages justified the higher price. The RFP listed six major evaluation areas, all of which were point scored as follows:

Corporate Experience and Capability	150
Personnel Experience and Capabilities	250
Proposed Facility	150
Management Approach	250
Phase In/out plans	150
Options	50

IMP and Centel submitted proposals. The technical evaluation panel, comprised of the contracting officer's technical representative and four library staff members, reviewed initial proposals, visited each contractor's site and reviewed final proposals. Panel members scored each proposal independently and, after initial review, found Centel's proposal to be technically acceptable (technically sufficient and in compliance with the RFP requirements) and IMP's proposal to be conditionally acceptable (capable of being made fully acceptable by clarification or modification). Panel members met, reviewed scores, exchanged opinions and determined a consensus score on each evaluation factor. The panel also listed questions for clarification in oral discussions and in best and final offers (BAFOs).

Discussions were conducted and proposals were evaluated a second time after BAFO submissions, using the same methodology of first scoring the factors independently and then meeting to determine consensus scores. Centel received a final technical score of 977, or 98 percent of the maximum 1,000 points. IMP received 725 points, or 73 percent of the maximum 1,000 points. Centel's price for the base and option years was \$1,192,968; IMP's price was \$1,135,367. Because the proposals were significantly different in

technical quality, the contracting officer weighed the technical advantages offered by Centel against the higher price and determined that the technical superiority offered by Centel was worth the additional 5 percent in price. The contract was awarded to Centel and this protest followed.

IMP argues that it should have been selected for award since it submitted a technically acceptable proposal and was the low offeror. IMP believes that the evaluation of the proposals was biased toward the incumbent since the contract was awarded on "marginal differences by a panel so closely involved with current operations that it could not properly evaluate the merits of a well qualified competitor." IMP alleges that it was held to a standard of knowledge concerning the proposed contract that only the incumbent could possess and charges that the deficiencies in its proposal cited by Justice "stem to a considerable extent from IMP not being the incumbent contractor with day to day exposure to the operations" IMP also argues that its BAFO answers were not properly interpreted, indeed "may not have been read," and that Justice misjudged its strengths and understanding of and ability to perform solicitation requirements.

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409; Ira T. Finley Invs., B-222432, July 25, 1986, 86-2 CPD ¶ 112. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. AT&T Technology Sys., B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. Consequently, we will question the agency's technical evaluation only where the record clearly shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. See American Educ. Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to

which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset, Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178.

Here, we find that Justice had a reasonable basis in justifying the award to Centel, at its higher price. The RFP provided that low cost would be the determinative factor only when proposals were judged to be of substantially equal technical merit. The record shows that Justice judged Centel's proposal as technically superior to IMP's proposal, especially in the areas of Management Approach and Personnel Experience and Capabilities. Additionally, Centel received higher ratings than IMP on each of the other four factors. Centel's evaluated score was 97.6, while IMP's evaluated score was 87.1.1/ Justice denies that it has a bias against IMP and points out that, rather than the "marginal differences" alleged by IMP, the record "shows incontrovertibly that Centel's proposal was superior to that offered by IMP." Accordingly, Justice determined that Centel's technical superiority as reflected in its score of 97.6, which was 25 percent higher than IMP's score, outweighed the 5 percent cost savings.

The bases for the differences in scores for IMP and Centel are summarized in the agency report on the protest. For example, with regard to management approach, IMP did not adequately address the role of Systems Manager and appeared dependent on its subcontractor for systems management expertise. Further, IMP did not adequately explain how the experience of its proposed Systems Manager fit the RFP's requirements. Additionally, the IMP Systems Manager had

1/ The evaluated score is determined by dividing each offeror's technical score by the highest technical score and by dividing the lowest price proposal by each offeror's price. These two figures are then weighted and added. Centel has a higher evaluated score regardless of whether only base year prices or base year plus option year prices are considered.

little or no experience with the Data General equipment used by the library and would have required training on this equipment. Finally, IMP did not provide detailed descriptions of backup procedures and consequently it was unclear if IMP had the necessary knowledge and capabilities in this area.

With regard to personnel capabilities, the agency reports that although the personnel proposed by IMP met the minimum experience requirements, Centel received the maximum points because of the prior experience and knowledge of its proposed personnel. Generally, IMP did not respond adequately to the panel's questions about the skills and experience of its staff.

Finally, IMP was rated lower on corporate experience because it did not present evidence of working with either Data General or a similar system, a requirement for this technical factor. In contrast, Centel received the maximum allowable points for its experience in working with Data General or similar equipment at the Department of Labor, General Motors Corporation, and Justice. The agency similarly has cited additional examples to substantiate its evaluation of the proposals in other areas.

The protester has not provided a detailed response to observations made in Justice's report with the sole exception of questioning whether it was fair of the agency to criticize it for not explaining how its proposed major subcontractor would transfer certain critical knowledge to the protester when the question the agency had asked during negotiations was in terms of supplying more information on the subcontractor's "specific responsibilities relating to this contract." Apart from this, the protester takes the general position that beyond a certain minimum standard of technical acceptability, "superiority" may be a matter of subjective judgment and personal preference which may be exercised in favor of an incumbent.

As noted above, however, our Office's review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. In the absence of a more specific, detailed rebuttal by the protester and based on our review of the record and the technical evaluation results set forth above, we have no basis to conclude that the evaluation was other than reasonable and consistent with the RFP's stated evaluation criteria.

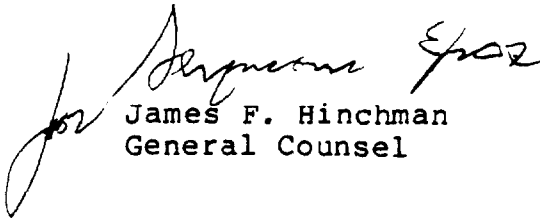
The agency also disputes IMP's allegation that panel members were so closely involved with current operations that they

were biased and therefore unable to properly evaluate IMP's proposal. The agency acknowledges that the panel was comprised of experienced operations personnel from the library staff but points out that while three members of the panel were familiar with Centel's performance and had regular contact with Centel's technical staff, two members were less or not at all familiar with Centel or its operations. Scores given by individual panel members show no pattern that would support a charge of bias. Moreover, ratings are similar from members familiar and unfamiliar with Centel and the chairman of the panel, who was most familiar with Centel, did not consistently rate the proposals higher or lower than other panel members. Where, as here, a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit convincing proof that contracting officials had a specific and malicious intent to harm the protester, since contracting officials are presumed to act in good faith. Scipar, Inc., B-220645, Feb. 11, 1986, 86-1 CPD ¶ 153. Prejudicial motives will not be attributed to such officials on the basis of inference or supposition. Eaton-Kenway, B-212757.2, June 20, 1984, 84-1 CPD ¶ 649. We have held that the opportunity for bias is not a sufficient basis to question an award of a contract, but that the protester must provide "hard facts" showing actual bias. Booz, Allen & Hamilton, 63 Comp. Gen. 599 (1984), 84-2 CPD ¶ 329. In this regard, we note that the fact that some panel members had prior contact with an offeror does not demonstrate that the evaluation was not objective. Although IMP apparently believes that Justice's evaluations of the proposals were designed to deprive IMP of an award, we find no evidence, other than the protester's bare allegations, that Justice's actions were so motivated.

Finally, with respect to IMP's allegations concerning Centel's position as an incumbent, we do not think that it was improper for the agency to consider in the evaluation Centel's specific experience performing the required tasks. We have recognized that incumbent contractors with good performance records can offer real advantages to the government and that those advantages may properly be considered in proposal evaluation. PECO Enters., Inc., B-232307, Oct. 27, 1988, 88-2 CPD ¶ 398. An agency is not required to equalize competition with respect to these advantages so long as the advantages do not result from

unfair action by the government. Wolf, Block, Schoor & Solis-Cohen, B-221363.2, May 28, 1986, 86-1 CPD ¶ 491.

The protest is denied.

James F. Hinchman
General Counsel